Supreme Court, U.S.
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IN THE
Supreme Court of the United States
APRIL TERM, 1995

SEAN JONES, *et al.*,

Petitioners,

v.

REGGIE WHITE, *et al.*,

Respondents;

NATIONAL FOOTBALL LEAGUE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI
VOLUME IV OF IV

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absent class members be afforded an opportunity to opt out of all class actions that involve claims for money damages. The court finds, however, that there is little support for such a broad interpretation of Shutts.

(a) The Supreme Court's decision in Shutts does not purport to make every mandatory non-opt-out class action unconstitutional. In Shutts, the Supreme Court determined that where a class action concerns claims "wholly or predominantly for money judgments", absent class members must be given notice, an opportunity to oppose the class settlement and an opportunity to opt out. 472 U.S. at 811-12 & n. 3, 105 S.Ct. at 2974-75 & n. 3. The Supreme Court, however, did not address class actions in which the claims for injunctive relief plainly predominate, and specifically stated that its holding was: limited to those class actions which seek to bind known plaintiffs concerning claims wholly or predominantly for money judgments. We intimate no view concerning other types of class actions.... Id. at 811 n. 3, 105 S.Ct. at 2974 n. 3; see also In re Jackson Lockdown/MCO Cases, 107 F.R.D. at 713-14; 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure s 1789, at 255 (2d ed. 1986) (noting Supreme Court's explicit limitation); 1 Herbert Newberg & Alda Conte, Newberg on Class Actions s 1.19, at 1-48 (3d ed. 1992) (Shutts was silent concerning the validity of classes certified under Rule 23(b)(1) and "[i]t is highly unlikely that the Supreme Court would have invalidated [that] rule[ ] without expressly doing so").

(b) The court thus concludes that even where a class action involves claims for money damages, mandatory non-opt-out class certification remains proper as long as the class claims for equitable or injunctive relief predominate over the claims for damages. In re Jackson Lockdown/MCO Cases, 107 F.R.D. at 713-14; (distinguishing Shutts for purposes of certifying class action involving claims for monetary relief under Rule 23(b)(1)); cf. Probe v. State Teachers' Retirement Sys., 780 F.2d 776, 780 (9th Cir.) (analyzing whether money damages are incidental to primary claim for injunctive relief for purposes of determining whether certification was proper under Rule 23(b)(2)), cert. denied, 476 U.S. 1170, 106 S.Ct. 2891, 90 L.Ed.2d 978 (1986); Williams v. Lane, 129 F.R.D. 636, 639-43 (N.D.Ill.1990) (same); Lloyd v. City of Philadelphia, 121 F.R.D. 246, 251 (E.D.Pa.1988) (class certified under Rule 23(b)(1)(B) and (b)(2)). [FN33]

FN33. The latter three cases all address the question of whether classes were properly certified under Rule 23(b)(2), which permits class actions involving both injunctive and monetary damages only in situations where the money damages are "merely incidental to the[ ] primary claim for injunctive relief." Probe, 780 F.2d at 780; see 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure s 1775, at 463 (2d ed. 1986) ("a suit predominantly seeking money damages would not qualify under this portion of the rule"). As previously discussed, in Shutts, the Supreme Court adopted virtually

the same test for purposes of determining whether absent class members have a constitutional right to opt out of a mandatory class, that is, whether a class is "wholly or predominantly for money judgments". 472 U.S. at 811 n. 3, 105 S.Ct. at 2974 n. 3. In addition, the purposes underlying (b)(1) and (b)(2) class actions are the same: "to avoid the risks of inconsistency, prejudice, or inequity that would result to persons similarly situated in the absence of a unitary adjudication of their common claims". 1 Herbert Newberg & Alda Conte, Newberg on Class Actions s 1.20, at 1-48 (3d ed. 1992). The court thus concludes that the cited Rule 23(b)(2) cases are instructive for purposes of determining whether a class action is properly considered as one "predominantly for money judgments." The court further rejects any claim that Rule 23(b)(2) cases are inapposite because such class actions are confined to civil rights claims. See, e.g., id. s 4.12, at 4-40 ("[t]he Advisory Committee Notes to Rule 23 emphasize that subdivision (b)(2) is not limited to civil rights cases", and the Note explicitly cites "price discrimination by wholesalers against a class of retailers and tying violations by patentees as examples in which Rule 23(b)(2) class actions could be used in antitrust cases").

(c) The court further rejects the contention of various objectors that mandatory non-opt-out class actions that include claims for money damages are confined solely to "limited fund" cases. Mandatory non-opt- out classes under

Rule 23(b)(1) may also be certified in cases involving claims for money damages in which no "limited fund" exists. See, e.g., Boggs v. Divested Atomic Corp., 141 F.R.D. 58, 67 (S.D.Ohio 1991); Specialty Cabinets & Fixtures, 140 F.R.D. at 477 (although the most common use, "limited fund cases are not the only cases certified under this subsection"). Similarly, courts routinely certify mandatory non-opt-out classes under Rule 23(b)(2) in cases involving hybrid claims for injunctive relief and damages, even in the absence of a "limited fund." Probe, 780 F.2d at 780; Lloyd, 121 F.R.D. at 251.

3.3 The factual circumstances of this case, and its predecessors, confirm that it is a case in which the plaintiff class's claims for structural, injunctive relief "predominate" over its claims for damages. In reaching this conclusion, the court relies on the following:

(a) The repeated motions for preliminary and permanent injunctive relief filed by the plaintiffs in Powell, McNeil, Jackson, and White. Indeed, the original complaint in the present action sought only injunctive relief.

Moreover, as previously discussed, class members' claims are interrelated because players are subject to a uniform system of player rules; therefore there is a significant identity of interest between class members for purposes of analyzing their economic injuries. See supra note 32. To provide a meaningful class remedy, any injuries must be redressed primarily through broad injunctive relief. In the absence of such relief, any award

of monetary damages would merely be a stopgap measure, insufficient to prevent the reoccurrence of such injuries while likely generating an unending procession of lawsuits.

(b) The entire record of the McNeil trial, and in particular, the testimony of the eight player-plaintiffs. For example, Freeman McNeil, the lead plaintiff in the McNeil case, testified at trial that his primary purpose in filing the McNeil lawsuit was not to recover money damages, but rather "[w]hat I'm suing for is the right to be able to make a choice in my life with what I do." McNeil Trial Transcript at 922. [FN34]

FN34. The court also noted McNeil's testimony during the final fairness hearing. White, Transcript of Final Fairness Hearing at 46 (Apr. 16, 1993).

(c) The repeated representations of class counsel and other player representatives, both before and after the parties had reached a tentative agreement to settle, that these lawsuits primarily sought either the elimination or the substantial modification of various NFL rules regarding player movement and employment. For instance, at the preliminary approval hearing, class counsel stated "that the essence of what the players have been seeking through all of this litigation has been a change in the overall system, a change in the industry-wide rules that have affected the terms and conditions of their employment." White, Transcript of Preliminary Approval Hearing at 19 (Feb. 26,

1993).

(d) The statements made by defendants and their representatives to the same effect. See Declaration of Paul Tagliabue PP 18, 27 (dated Feb. 22, 1993).

(e) The terms of the Stipulation and Settlement Agreement itself, which devotes 179 pages of the 188-page document to redefining the rules and practices governing player employment in the NFL.

3.4 In cases where sufficient alternative procedural safeguards are employed, opt-out rights are not constitutionally required. See, e.g., Williams v. Burlington Northern, Inc., 832 F.2d 100, 104 (7th Cir.1987) (even though plaintiff did not have right to opt out, court "provided [plaintiff] with the equivalent due process protection that would be accorded to a Rule (23)(b)(3) class member"), cert. denied, 485 U.S. 991, 108 S.Ct. 1298, 99 L.Ed.2d 508 (1988); cf. Robertson, 556 F.2d at 685-86 (discussing due process rights of mandatory class members prior to Shutts). Moreover: [b]ecause the protection of the rights of class members in classes certified under Rule 23(b)(1) or (2) is much more interdependent with resolution of the rights of others similarly situated than is the case for [23(b)(3)] class members connected only because their claims involve common questions, it is probable that individual procedural due process rights involving minimum contacts with the forum will not be imposed on these more cohesive, interdependent class actions, when they were not required in more discretionary common question class

actions. 1 Herbert Newberg & Alda Conte, Newberg on Class Actions s 1.20, at 1-48 (3d ed. 1992) (discussing impact of Shutts). Even though class members in the present case may not opt out, the court concludes that the requirements of due process have been satisfied because the objectors have been: (1) adequately represented by the named plaintiffs; (2) adequately represented by capable and experienced class counsel; (3) provided with adequate notice of the proposed settlement; (4) given an opportunity to object to the settlement; and (5) assured that the settlement will not be approved unless the court, after analyzing the facts and law of the case and considering all objections to the proposed settlement, determines it to be fair, reasonable and adequate. See, e.g., Williams, 832 F.2d at 104; Nottingham Partners v. Dana, 564 A.2d 1089, 1100-01 (Del.1989).

3.5 The court determines that the Ninth Circuit's recent decision in Brown v. Ticor Title Ins. Co., 982 F.2d 386 (9th Cir.1992), is not to the contrary. The Brown case does not alter the constitutional standards articulated in Shutts and, in fact, expressly recognizes that "Shutts is limited to claims 'wholly or predominantly for money judgments.' " Id. at 392 (quoting Shutts, 472 U.S. at 811 n. 3, 105 S.Ct. at 2974 n. 3). At most, Brown stands for the proposition that where a class action involves claims "wholly or predominantly" for money damages, and where the settlement of such class action accords only injunctive relief and no damage recovery, an absent nonresident class

member's later claim for damages will not be barred.

The court concludes that Brown has no application to the present case because: (1) the plaintiff class' claims are predominantly injunctive in nature, and (2) the relief provided for by the terms of the settlement, although predominantly injunctive, also includes substantial payments to settle the damages claims of the individual players.

3.6 Accordingly, the court concludes that due process does not require that absent class members be afforded an opportunity to opt out of the White class settlement.

IV. SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT

A. Structural Relief

4.1 Free Agency. The following is a brief summary of the principal provisions of the Stipulation and Settlement Agreement relating to veteran free agency.

(a) The settlement provides that, except for the few "Franchise" and "Transition" players to whom special rules apply, all players with at least five years of NFL experience whose contracts have expired may negotiate and enter into contracts with NFL teams as unrestricted free agents during a "signing period" extending from contract expiration, on or about March 1st, through approximately July 15th, of each year. In the event that the contingent salary cap provision, discussed infra PP 4.3-.5, is in effect, the Agreement provides for free agency after four rather than five years of experience.

(b) Players with three or four years of experience whose contracts have expired may be subject to certain rights of first refusal ("RFR") by their existing team-employer, and if the player moves to a new team, his new employer may have to give draft rights as compensation to the player's former team; however, such rights cannot be invoked unless the former team has tendered the player a substantial contract offer. The scope of such rights also varies depending on the amount of the offer: in general, the higher the offer, the greater the rights acquired. Moreover, in the event that NFL revenues increase from one year to the next, the amounts of those requisite tender offers are to increase at the same rate, up to a maximum of ten percent per year.

(c) Players with less than three years of experience are subject to their former teams' exclusive negotiating rights, provided that they are offered salaries of at least $100,000 for players with less than one year of experience, $125,000 for players with one year of experience and $150,000 for players with two years of experience. In the event that NFL revenues increase from one year to the next, those minimums are to increase at the same rate, up to a maximum of ten percent per year.

(d) All veteran players are governed by the above free agency rules except those who are designated "Franchise" or "Transition" players. In any year, each team is permitted to designate one Franchise Player by tendering an offer of a one year contract at a salary

amounting to the greater of (1) the average of the salaries of the five highest paid players at the designated player's same position, or (2) a twenty percent increase in the designated player's previous year's salary. A team thereby obtains exclusive negotiating rights to the Franchise Player, notwithstanding his years of experience.

(e) In the first year of the Agreement, each team may designate two, and, in both the second and final year of the Settlement Agreement, one, Transition Player(s) by tendering an offer of a one year contract at a salary amounting to the greater of (1) the average of the salaries of the ten highest paid players at the designated player's same position, or (2) a twenty percent increase in the designated player's previous year's salary. A team thereby obtains a RFR with respect to the transition player, notwithstanding his years of experience.

(f) In years when there is no salary cap in effect, the four teams in the previous season's conference championship games are not permitted to sign unrestricted free agents from other teams. The next four runner-up teams in the playoffs can sign one unrestricted free agent from another team at a salary of $1.5 million or more per year, and an unlimited number at less than $1 million. In the event of an increase in NFL revenues, those amounts are to increase at the same rate. Notwithstanding the above, those eight teams can replace their own free agents who have moved to other teams, and pay any such replacement player up to the amount the departed free agent is receiving

from his new team.

4.2 College Draft. Under the terms of the Stipulation and Settlement Agreement, the NFL college player draft consisted of eight rounds this year, and will be seven rounds thereafter, substantially fewer than the prior twelve round draft. In addition to the seven rounds of the draft, there may also be up to twenty-eight "compensatory" draft picks per year for teams losing certain free agents. Teams obtain exclusive negotiating rights to their rookie draftees through a tender at the minimum active-list salary (initially $100,000). All players who were eligible to be drafted, but were not chosen, are free to negotiate with any team of their choosing.

4.3 Salary Cap. If in any season the league-wide total of player costs rises to sixty-seven percent of Defined Gross Revenues ("DGR"), as that term is defined in the Stipulation and Settlement Agreement, the salary cap provisions are triggered, and the cap will go into effect in the following season. If in effect, the salary cap will limit the percentage of DGR that can be expended on player costs as follows: in the first "capped" year, total league-wide player costs may not exceed sixty-four percent of DGR; in the second year sixty-three percent; in the third year sixty-two percent; and in subsequent years sixty- two percent; subject to certain cap adjustment and removal provisions. The cap is to be equally allocated among the teams. Once triggered, the total dollar amount of the cap cannot go down from one year to the next, subject to a

maximum cap of seventy percent of DGR. There is to be no salary cap in 1999, the final year of the Agreement.

4.4 League and Team Guarantees. Minimum salary guarantees will come into effect simultaneously with the triggering of the salary cap. Such guarantees will require that league-wide player costs amount to at least fifty- eight percent of DGR and that each team's player costs amount to at least fifty percent of its own share of DGR. Any shortfall on those guarantees will be paid out immediately at the end of each season to affected players on a league- wide or per-team basis, as appropriate.

4.5 Salary Cap "Lift Off". If, after the cap is triggered, league-wide player costs drop below fifty-nine percent of DGR, the next year's cap is increased by one percent; if below fifty-eight percent, the cap is increased by two percent; if below fifty-seven percent, the cap is increased by three percent; and if below fifty-six percent, the cap is lifted entirely, subject again to the sixty-seven percent trigger.

4.6 Entering Player Pool. Under the terms of the Stipulation and Settlement Agreement, the salaries of rookie players are not to exceed the higher of: (1) 3.5% of DGR, (ii) $2 million times the number of teams in the league, or (iii) the previous year's pool. That amount, which cannot decrease from year to year, currently equals approximately the average, over the past three years, of the amount that has been expended on salaries of all draftees in the first eight rounds. The amount available to each team for rookie

draftees will vary depending on several factors, including order in the draft, traded draft picks and compensatory picks. Incoming drafted rookies will negotiate their salaries individually within the pool. The salaries of undrafted rookies do not come out of the pool except to the extent that they exceed the minimum active-list salary applicable to such players.

4.7 Anti-Collusion Provisions. The Stipulation and Settlement Agreement also contains various anti-collusion provisions which prohibit the NFL and any NFL member team from agreeing with any other team regarding: (1) the decision to negotiate or not negotiate with any player; (2) the decision to submit or not submit an offer sheet to any restricted free agent; (3) the decision to offer or not offer a contract to any player; (4) the decision to exercise or not exercise a right of first refusal; or (5) the terms or conditions of employment offered to any individual player for inclusion in a player contract. In addition, an expedited and comprehensive enforcement mechanism has been created to deter and punish any collusion violations.

4.8 Court Supervision. The court will retain jurisdiction over the enforcement of the Settlement Agreement through appointment of a special master, who will hear disputes on an expedited basis, subject to review by the court.

B. Monetary Relief

4.9 The Stipulation and Settlement Agreement also provides monetary relief to the plaintiff class. Specifically,

the defendants are to pay approximately $115 million for distribution to class members in the White case. In addition, as set forth below, another $80 million in monetary relief and reimbursement of costs will be paid to players and the NFLPA by the NFL defendants in settlement of this and other related litigation. Of the $195 million total amount to be paid by the NFL, approximately $97 million will be paid this year and the remaining $98 million will be paid in five annual installments through 1998.

4.10 The $115 million White settlement fund is to be allocated pursuant to the following plan:

(a) Class members with claims for damages resulting from Plan B and accompanying player restraints will be assigned points in accordance with the formula set forth below. The value of a point will be determined by dividing the sum of $110 million by the total number of points assigned. Points will be assigned as follows: --Players who entered new contracts after being protected under Plan B in 1990, 1991, or 1992 will receive 1 point for each year in which they continue to be restricted while playing under such a contract. --Players who renegotiated and/or extended contracts prior to being protected under Plan B in 1990, 1991, or 1992 will receive 1/2 point for each year in which they continue to be restricted while playing under such a contract. --Players who entered new contracts after being protected under Plan B in 1989 will receive 1/2 point for each year in which they continue to be restricted while playing under such contract. --Players who renegotiated

and/or extended contracts prior to being protected under Plan B in 1989 will receive 1/4 point for each year in which they continue to be restricted while playing under such a contract.

(b) The named plaintiffs in the White case will not receive any points for contracts entered into while protected in 1990, 1991, and/or 1992, but will instead receive the following amounts: Reggie White--$0; Michael Buck--$134,805; Vann McElroy--$470,194; Hardy Nickerson--$494,836. Those amounts represent the damages, before trebling, that they would have sought at trial were they to use the methodology for estimating damages developed and relied upon by Michael Glassman, the plaintiffs' expert economist in the McNeil case, as adjusted to apply to the facts of each player. In addition, Reggie White will receive 1 1/2 points because he entered into a three-year contract extension in 1990 before being protected in that year, and Hardy Nickerson will receive 1 point because he entered into a two-year contract extension in 1990 before being protected in that year.

(c) The named plaintiffs in the Lewis case, which has been consolidated with White, will not receive any points for contracts entered into in 1989, but will instead receive the following amounts for their damage claims arising in that year: Albert Lewis--$711,600; Wayne Radloff--$214,115. Those amounts represent the damages, before trebling, that they would have sought at trial were they to use the Glassman methodology.

(d) Individual plaintiffs in the related player lawsuits that are being settled concurrently with the class action are not to receive any points for claims in those cases that are coextensive with any claims that they may have in the White class action.

(e) Class members with claims for deprivation of preseason pay will be assigned points in accordance with the following formula. The value of a preseason pay point will be determined by dividing the sum of $5 million by the total number of points assigned. Class members will receive one tenth of one preseason pay point for each hundred dollars, or fraction thereof, of their claims. The amount of each player's "claim" is equal to the amount he was entitled to earn under Paragraph 6 of his NFL Player Contract minus whatever amount he was actually paid by his team prior to being cut in the preseason period.

(f) As in White, Lewis, and the individual player cases, the named plaintiff for the preseason pay claims, Dave Duerson, will not receive any preseason pay points but will instead receive the sum of $98,302, which is the amount of damages, before trebling, that he would have sought at trial were he to use the Glassman methodology.

C. Settlement of Related Litigation

4.11 The class action settlement described above is one part of a broader global settlement of a host of other litigation between players and defendants. The class action settlement could not have been reached without the concurrent resolution of those other matters, because it is

the objective of both the class and of the NFL to lay a firm foundation for peace for years to come. Beyond this overarching benefit, the global settlement provides a number of additional significant benefits to class members as described below.

4.12 Back Pay. The back pay case, NFLPA v. NFL Management Council, was filed shortly after the end of the 1987 strike on behalf of all striking players and alleges that the NFL had wrongfully deprived all returning strikers of one week's pay by preventing them from returning to work for one week despite the fact that the players were ready, willing and able to do so. That case is to be settled in consideration of payment by the NFL defendants to the striking players, all of whom are White class members, of approximately $30 million.

4.13 Licensing Litigation. NFLPA v. NFL Properties, Inc., No. 90-CV-4244 (S.D.N.Y.), was filed on June 25, 1990, by the NFLPA, seeking damages for antitrust violations and tortious interference with existing NFLPA group licensing authorizations. That lawsuit is to be settled in consideration of the NFL defendants' agreement (i) to pay the plaintiff NFLPA $10 million; (ii) to sublicense certain of the contested players' rights back to the plaintiff NFLPA; and (iii) to assign to the NFLPA certain licensing agreements with manufacturers that had licensed players' rights from NFL Properties. The $10 million fund will be distributed by the NFLPA to all NFLPA members who signed and honored their group

licensing authorizations. The beneficiaries of that settlement are also White class members. In addition, as a direct result of the global settlement, seven other licensing related cases between and among the NFLPA, NFL Properties, various individual players, and various NFLPA and NFL Properties' licensees will be settled. [FN35]

FN35. Those cases are: NFLPA v. Roby, Case No. 92-09092(15) (Cir. Ct. Broward Cty. Fla.); NFLPA v. Carrier, Case No. 92 CH 3281 (Cir. Ct. Cook Cty. Ill.); NFLPA v. Fulcher, Case No. 92-CI-00604 (Kenton Cir. Ct. Ky.); NFLPA v. Clayborn, Docket No. 92-00984 (Norfolk Sup.Ct. Mass.); NFLPA v. Golic, Docket No. C123-92 (Sup.Ct. Bergen Cty. N.J.); NFL Properties, Inc. v. Hi Pro Marketing, No. 92 Civ. 1456 (S.D.N.Y.); and Aikman v. AAA Sports, No. 92 Civ. 1457 (S.D.N.Y.).

4.14 Preexisting Individual Lawsuits. There are a number of individual player lawsuits, all funded by the NFLPA, which predate the filing of the White class action and challenge the Plan B rules and various other alleged unlawful practices by the NFL relating to the terms and conditions of player employment. [FN36] Those cases are to be settled separately, and the plaintiffs therein will not participate in the class settlement fund to the extent that their claims in such cases are coextensive with claims that they might have made in the White class action. For example, the eight McNeil plaintiffs will not receive any

points for 1990 or 1991, the years for which they sought damages in their individual complaint, but will receive points, if eligible, for 1989 and 1992 as class members. The total consideration to be paid by the NFL defendants for the settlement of those preexisting cases is approximately $19,028,628.

FN36. Those cases are: McNeil v. National Football League, Civ. No. 4- 90-476 (D.Minn.); Jackson v. National Football League, 802 F.Supp. 226 (D.Minn.); Joyner v. National Football League, Civ. No. 92-2876 (E.D.Pa.); Allen v. Chargers Football Co., Civ. No. 91-4322 (C.D.Cal.); Hebert v. National Football League, Civ. S023456 (Sup.Ct.Cal.); Solomon v. National Football League, No. 92-1244 (Tex. Dist.Ct.); Morris v. New York Giants, Inc., (Arbitration before Hon. Bernard S. Meyer); Chandler v. Indianapolis Colts, Inc., Civ. No. 54601-9009-CP-0453 (Ind.Cir.Ct.); Mullin v. Los Angeles Rams Football Co., No. B063729 (Cal.Ct.App.); and Tice v. Pro Football, Inc., Civ. No. 4-93-169 (D.Minn.).

D. Attorneys' Fees, Costs, and Disbursements

4.15 No legal costs are to be paid out of the settlement fund. However, as part of the global settlement, defendants have agreed to reimburse the NFLPA for attorneys' fees, costs, and disbursements, in the amount of approximately $18,847,520, incurred in connection with its financing, prosecution, and defense of the White class action

and the other lawsuits that are concurrently being settled.

V. STANDARD FOR COURT EVALUATION OF THE STIPULATION AND SETTLEMENT AGREEMENT

5.1 The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context. Armstrong v. Board of Sch. Directors, 616 F.2d 305, 312-13 (7th Cir.1980); Holden v. Burlington Northern, Inc., 665 F.Supp. 1398, 1405 (D.Minn.1987). Settlement of the complex disputes often involved in class actions minimizes the substantial burdens to the parties and to scarce judicial resources that such litigation entails. Armstrong, 616 F.2d at 313.

5.2 Notwithstanding the strong policy favoring settlement, Federal Rule of Civil Procedure 23(e) provides that a class action may not be dismissed or compromised without court approval. Under this rule, the court has a duty to protect the rights of absent class members as well as the interests of the named plaintiffs. Grunin, 513 F.2d at 123; Welsch v. Gardebring, 667 F.Supp. 1284, 1289 (D.Minn.1987).

5.3 In evaluating a class action settlement pursuant to Rule 23(e), the district court's primary responsibility is to ensure that the settlement is "fair, reasonable, and adequate." Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir.1988) (citing Grunin, 513 F.2d at 123); In re Flight Transp. Corp. Sec. Litig., 730 F.2d 1128, 1135 (8th Cir.1984), cert. denied, 469 U.S. 1207, 105 S.Ct. 1169, 84

L.Ed.2d 320 (1985).

5.4 Such a determination is committed to the discretion of the trial judge, and will not be overturned except on a showing that the district court clearly abused its discretion. Wiener v. Roth, 791 F.2d 661, 662 (8th Cir.1986); Reynolds, 584 F.2d at 283; Grunin, 513 F.2d at 123. Great weight is accorded the trial court's views: 'because he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.' Reynolds, 584 F.2d at 283 (quoting Grunin, 513 F.2d at 123 (quotation omitted)).

5.5 In evaluating the fairness, reasonableness and adequacy of the proposed settlement, the court is to consider various factors, the most important of which is the strength of plaintiffs' case on the merits balanced against the benefits to the class provided by the settlement. Van Horn, 840 F.2d at 607; Grunin, 513 F.2d at 124; Holden, 665 F.Supp. at 1407. Other important factors include: 1) the opinions of the participants, including class counsel, class representatives, and class members; 2) the complexity, expense, and likely duration of further litigation; 3) the extent of discovery completed and the stage of the proceedings; and 4) the evidence, if any, that the proposed settlement is the product of fraud and collusion. Holden, 665 F.Supp. at 1407 (citations omitted); accord Armstrong, 616 F.2d at 314; Grunin, 513 F.2d at 124; Welsch, 667

F.Supp. at 1290.

5.6 Moreover, in evaluating the settlement; the court does not have the responsibility of trying the case or ruling on the merits of the matters resolved by agreement. Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,993, 1977 WL 1497, at * 12. Rather, " 'the very purpose of compromise is to avoid the delay and expense of such a trial.' " Id. (quoting Grunin, 513 F.2d at 124). The court's ultimate responsibility is to determine whether the settlement as a whole " 'is so unfair as to preclude judicial approval.' " Id. (quoting Robertson v. National Basketball Ass'n, 72 F.R.D. 64, 68 (S.D.N.Y.1976), aff'd, 556 F.2d 682 (2d Cir.1977)).

5.7 Finally, where, as here, the settlement of class claims includes a lump sum payment, the court must also approve of a plan for allocating the settlement proceeds to class members. See Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,996; 1977 WL 1497, at *17; 3 Herbert Newberg & Alda Conte, Newberg on Class Actions s 12.35, at 12-76 (3d ed. 1992).

VI. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Strengths of Plaintiffs' Case Balanced Against the Benefits of the Settlement

6.1 In weighing the strength of plaintiffs' case against the benefits provided by the proposed settlement, the court: cannot be expected to balance the scales with the nicety of an apothecary. The very object of compromise 'is

to avoid the determination of sharply contested and dubious issues.' Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,993, 1977 WL 1497, at * 12 (quoting Young v. Katz, 447 F.2d 431, 433 (5th Cir.1971)). Thus, the court's determination generally will not go beyond "an amalgam of delicate balancing, gross approximation, and rough justice." Welsch, 667 F.Supp. at 1290 (quoting City of Detroit v. Grinnell Corp., 495 F.2d 448, 468 (2d Cir.1974)).

6.2 The Risks of Further Litigation. Plaintiffs face numerous risks and uncertainties in going forward with this litigation. Those risks include the following:

(a) Despite the verdict in the McNeil case, the establishment of defendants' liability for the imposition of the right of first refusal/compensation rules of Plan B is still subject to appeal. Defendants have indicated their intent to appeal the McNeil judgment on a number of grounds, including the applicability of the nonstatutory labor exemption, defendants' alleged incapacity as a "single entity" to enter into an antitrust conspiracy, the proper application of the rule of reason under Section 1 of the Sherman Act, and the "fact of injury" element of liability in a private antitrust action. Should the McNeil judgment be overturned on one or more of those grounds, plaintiffs would at best be faced with the prospect of retrying, at great expense and after substantial delay, the issue of liability. At worst, if defendants were to prevail on issues such as the labor exemption or the single entity defense, plaintiffs might be entirely precluded from establishing liability.

In addition, because the McNeil verdict involved only the right of first refusal/compensation rules of Plan B, plaintiffs would still have to prove defendants' liability concerning the other challenged restraints, most significantly the college draft and the league's preseason pay policies, with the latter claims burdened by pending counterclaims for substantial sums.

(b) Even if such liability were established, the results of the McNeil trial demonstrate that the class members would face substantial obstacles and uncertainties in proving damages. Evaluating the same type of damage issues presented here, the McNeil jury awarded no damages to four of the eight plaintiffs, while the four other plaintiffs received far less than they had sought, despite plaintiffs proffering substantial evidence in support of their damage claims. [FN37] Cf. Kapp v. National Football League, 586 F.2d 644, 648 (9th Cir.1978) (player asserting multimillion dollar claim failed to prove that challenged restraint caused any damages). Finally, after presiding over the McNeil trial, the court notes that one cannot discount the reluctance of a jury to award damages to professional football players, who are readily perceived as successful, highly paid individuals. See Alexander, 1977-2 Trade Cas. P 61,730, at 72,995, 1977 WL 1497, at *16 (damages uncertain because there was "no assurances that class members' claims would be sympathetically viewed by the jury"); Robertson, 72 F.R.D. at 69 (it would be difficult to convince a jury that professional basketball players should

be paid more money).

FN37. The following is a comparison of the damages that plaintiffs' expert, Michael Glassman, calculated for the McNeil plaintiffs versus the actual damages awarded by the jury:

		Estimated Damages	
Plaintiff	Actual Damages *	Plan B Model	USFL Yardstick
Mark Collins	$178,000	$ 396,000	$ 387,000
Don Majkowski	0	1,366,000	1,338,000
Tim McDonald	0	681,000	668,000
Freeman McNeil	0	399,000	383,000
Frank Minnifield	50,000	425,000	410,000
Niko Noga	0	190,000	184,000
Dave Richards	240,000	480,000	473,000
Lee Rouson	75,000	100,000	97,000
TOTAL	$543,000	$4,037,000	$3,940,000

* Before trebling.

The court notes that plaintiffs' actual experience in McNeil undermines
the expert opinion concerning damages proffered by various objectors.

(c) Even if it were conclusively established that all of the player rules challenged in the present class action violate the antitrust laws, there is uncertainty as to the scope of injunctive relief that would be afforded to the plaintiffs. If the present case is not settled, plaintiffs will likely face further litigation concerning the "reasonableness" of some other modified player reservation system adopted by defendants. [FN38]

FN38. In McNeil and Jackson, defendants made perfectly clear their intent to impose Plan C, Plan D and so on, until one passed muster.

6.3 The Benefits to the Class. The terms of the Stipulation and Settlement provide for substantial benefits to the class. Those benefits include the following:

(a) A radically modified player reservation system that provides for substantial unrestricted free agency for veteran players, a result that is consistent with the primary goal of players in this and predecessor lawsuits. The terms of the settlement ensure that almost every player with at least five years of experience (four, if a salary cap is in place) will, on contract expiration, have the opportunity to

offer his services to other teams. See supra P 4.1(a) (detailing provisions).

(b) Higher "tender" requirements before a club can place any restrictions on a player's mobility. For instance, in order to invoke the narrow exceptions for Franchise and Transition players, clubs must tender very substantial offers to the players, so as to make those players among the highest paid in professional football. See supra P 4.1(d) (setting forth tender required for Franchise Players); P 4.1(e) (detailing tender required for Transition Players). Similarly, with respect to those players with as little as three years of experience, clubs can limit their rights to become unrestricted free agents only if their former teams tender substantial offers. See supra P 4.1(b) (discussing rules for such players).

(c) Lesser restrictions on those players who are subject to free agency limitations. Under Plan B, most restricted players were subject to both a right of first refusal and compensation of two first round draft picks. However, the Settlement Agreement provides that the restrictions on such players will vary from a minimum of a right of first refusal alone to a maximum of a right of first refusal plus compensation of one first round and one third round draft pick; greater restrictions will require substantially higher tender offers.

(d) A fewer number of rookie players will be subject to the college draft, which is to consist of seven rounds (eight in 1993) as compared to the prior draft, which

consisted of twelve rounds. All other college players will be unrestricted free agents. See supra P 4.2 (detailing college draft provisions).

(e) Substantial league-wide and team minimum "guarantees" in the form of a percentage of revenues that is to be paid to players in the event a salary cap were to go into effect. See supra P 4.4 (describing various guarantees).

(f) Strict anti-collusion provisions with an expedited and comprehensive enforcement mechanism to deter and punish any collusion by defendants. See supra P 4.7 (discussing anti-collusion provisions).

(g) Settlement payments totalling $115 million to be distributed among White class members. A rough gauge of the magnitude of the settlement fund may be provided by comparing it to the recovery of the class in the Alexander case, which also sought a league-wide recovery for injuries to players accruing over several years as a result of a similar NFL system of veteran player restraints. In Alexander, 3,292 players participated in a fund of $13,675,000, and players' average share was approximately $4,100. 1977-2 Trade Cas. P 61,730, at 72,996-97, 1977 WL 1497, at *18-19. [FN39] In the present case, the bulk of the fund is to be distributed among approximately 1100 class members with Plan B damage claims, and the average share for those class members is approximately $100,000, which is twenty-five times greater than the average recovery in Alexander.

FN39. As previously noted, the Alexander settlement employed a point system similar to the one used here.

Another rough indication of the adequacy of the settlement is to compare the amount that each player will receive for a year of damages in 1990, 1991 or 1992, that is, the value of one point in the distribution formula, with the recovery actually obtained by the eight plaintiffs in the McNeil case. It is estimated that the settlement will provide each class member with approximately $70,000 for every year in which he was subject to the Plan B rules between 1990 and 1992, as compared to an average recovery per year of damages by the McNeil plaintiffs of $36,200. [FN40] Many class members will receive more than one point, with the maximum recovery of 3 1/2 points for players who were restricted in all four years, resulting in a payment of approximately $245,000.

FN40. That figure results from dividing the total damages, before trebling, found by the jury in McNeil, $543,000, see supra note 37, by fifteen years, the total number of years for which plaintiffs sought damages.

6.4 Since the court entered its preliminary approval order on February 26, 1993, the substantial benefits to class members provided by the Stipulation and Settlement Agreement have already become apparent. In just a little over a month, seventy-eight unrestricted free agents have

entered into new contracts, fifty-three of them with new teams. (Quinn Supp.Aff. P 9.) Additionally, at least ten restricted free agents, who are subject to first refusal and compensation rights, have received offers from other teams. (Quinn Supp.Aff. P 11.) Of those, four players have already moved to new teams and two others may still do so. Players designated as Transition Players have also been receiving offers. To date, at least four Transition Players have received offers from other teams, and one has contracted with a new club and changed teams. (Quinn Supp.Aff. P 15.) Those players have also received substantial salary increases. Id. The court thus concludes that the marketplace experience during the first month of the new free agency system strongly confirms the substantial benefits that the Settlement Agreement bestows on the class.

B. Complexity, Expense and Likely Duration

6.5 Continued litigation of the present action would be complex, expensive and protracted. First, various liability issues may be affected, or even precluded, by an appeal of the McNeil case. As previously discussed, defendants would likely appeal the McNeil verdict and would seek to stay the present case while their appeal is pending. See supra P 6.2(a) (noting grounds on which defendants are likely to appeal). An appeal in the McNeil case would likely be protracted, presenting novel and complex legal issues. See supra P 2.23 (discussing conflicting case law concerning various issues presented by these cases).

6.6 Apart from the liability issues relating to Plan B, there are also additional liability issues that would have to be tried, including the legality of the college draft and the issue of preseason pay. Some indication of the time and resources needed to prepare and resolve a trial on the draft may be obtained by looking at the McNeil case, in which years of preparation and months of trial were required to adjudicate the legality of the Plan B restraints on veteran players.

6.7 Issues concerning injunctive relief are also complex. Whether granted as a permanent injunction in the McNeil case, a preliminary injunction in the present action, or both, any court-ordered relief against the current NFL player reservation system would likely provoke further litigation and appeals.

6.8 Beyond liability and injunctive relief lie damage issues that could be even more complex. The courts that approved the settlements of the analogous Alexander and Robertson cases both noted that proof of damages in cases such as this can be extremely time-consuming and costly. Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,995, 1977 WL 1497, at *15 (trial of damages issues would be "lengthy, costly and almost overwhelming"); Robertson, 72 F.R.D. at 70. Plaintiffs' experience in McNeil underscores the problems in proving such damages. See supra P 6.2(b) & note 37.

C. Class Counsel and Class Members Believe that the Settlement is Reasonable

6.9 As detailed in the declarations of James W. Quinn and Edward M. Glennon, submitted in support of final court approval of the settlement, plaintiffs' counsel strongly believe that the proposed settlement is reasonable, fair and in the best interest of the class. As representatives of the plaintiffs in the Powell and McNeil cases, class counsel have been intimately involved in the entire five-year history of related lawsuits which culminated in the present settlement. The court therefore affords considerable weight to the opinion of experienced and competent counsel that is based on their informed understanding of the legal and factual issues involved. See Armstrong, 616 F.2d at 325 ("[w]hile the court ... should not abdicate its responsibility to review a class action settlement merely because counsel support it, the court is entitled to rely heavily on the opinion of competent counsel"); Welsch, 667 F.Supp. at 1295 (the court is to give "great weight to ... the judgment of experienced counsel").

6.10 It is also significant that class counsel consulted with the NFLPA in negotiating the settlement. Since the expiration of the last collective bargaining agreement in August 1987, the NFLPA has supported numerous player lawsuits challenging the legality of various NFL player restraints, and it has entirely funded the present class action, its predecessors Powell and McNeil, and various other related lawsuits that are being settled simultaneously with this case. Based on their consultation with the NFLPA and with the class representatives, class counsel believe that the

reaction of the overwhelming majority of the players to the settlement has been extremely favorable. (Quinn Aff. P 79.)

6.11 The overall favorable response of the plaintiffs and class members to the proposed settlement strongly supports settlement of this action. After extensive notice by mail and publication, more than ninety-eight percent of the class have supported the proposed settlement; only eighty-nine class members have filed objections to the proposed settlement out of a class comprised of more than five thousand class members.

D. The Extent of Discovery Completed and the State of the Proceedings

6.12 The extent of discovery completed and the stage of the proceedings at which settlement is reached are important factors because they are indicative of both the court and counsel's ability to evaluate the merits of plaintiffs' claims. Armstrong, 616 F.2d at 325; Welsch, 667 F.Supp. at 1297. Although the present case is technically in its early stages, the evaluation of the merits of plaintiffs' claims is necessarily informed by the comprehensive records compiled in the prior player lawsuits involving similar or identical issues. Just as the Alexander court was able to evaluate the propriety of the proposed class action in light of its experience in the Mackey case, here the McNeil case, which after years of discovery and a three-month trial has been litigated through verdict, provides a sound basis on which to evaluate the strengths and

weaknesses of plaintiffs' case and the merits of the proposed settlement.

E. The Settlement is the Product of Arm's Length Negotiations

6.13 The proposed settlement is the culmination of over five years of hard fought litigation in which NFL players, represented by class counsel, challenged the legality of the NFL player reservation system. Cf. Robertson, 389 F.Supp. at 899 ("[t]he four-year history of this litigation is sufficient indication that the named plaintiffs and their counsel will fairly and adequately protect the interests of the class"). As previously discussed, during the course of the litigation, the court presided over various related cases and participated in the final stages of the settlement negotiations. As a result of its involvement, the court is aware that the settlement was not reached easily, but represents the product of long and difficult negotiations, conducted in good faith and at arm's length by experienced and able attorneys. (See also Quinn Aff. PP 21-30; Tagliabue Decl. PP 31-33.) In addition, the court relies on the following factors to support its conclusion that the settlement was negotiated at arm's length: the size and complexity of the Agreement and the compromises reflected therein; the context in which it was reached, that is, after five and one-half years of frequently acrimonious litigation; the court's personal knowledge of the negotiators and the tenacity with which they struggled to protect their principals' interests; and the need for the court's involvement in the final stages of the negotiations.

See also White, Transcript of Preliminary Approval Hearing at 82-84 (Feb. 26, 1993) (finding no evidence of collusion and concluding settlement was product of arm's length negotiations).

The court also relies on its determination that the terms of the proposed settlement are fair, reasonable and adequate. See infra Section VI(F). Under such circumstances, the court may assume that the negotiations were proper. See, e.g., Bowling v. Pfizer, Inc., 143 F.R.D. 141, 152 (S.D.Ohio 1992) (citation omitted).

F. The Method of Distributing the Settlement Funds is Fair and Reasonable

6.14 The plan for distributing the settlement proceeds was devised by class counsel, in consultation with the NFLPA, in an effort to ascertain the relative amount of damages suffered by class members, while also taking into account the relative strengths of the various claims.

6.15 The basic structure of the formula for allocating the fund for Plan B claimants, which equally apportions the fund among players with claims of like nature in the same time period, is modeled on the allocation formula approved by the court in the Alexander settlement. [FN41] Players who entered into new contracts after being restricted in 1990, 1991 or 1992, receive one point for each year of such a contract based on the rationale that the Plan B rules had an overall depressing effect on salaries by depriving all such players, after their contracts expired, of the ability to bargain as free agents in a competitive market. Players who

renegotiated or extended their contracts before being restricted in 1990, 1991 or 1992, receive only one-half point for each year of such a contract because the recovery of damages is less certain in those circumstances than for players who were protected after contract expiration. (Quinn Aff. P 60.) While players arguably suffered no damages if already under contract when they were restricted, it could also be argued that any contract renegotiation would have been conducted with the parties' knowledge that the player was going to be restricted, and therefore, the resulting contract would not reflect what the player would have been able to obtain in a competitive market.

FN41. A similar formula was used in Robertson to settle analogous antitrust claims of a class of professional basketball players. (Quinn Aff. P 59.)

6.16 The above point values are reduced by a factor of one-half for damage claims arising out of contracts entered into in 1989 because plaintiffs with those claims, which exist only by virtue of the Lewis case, would have less chance of establishing liability than players with claims arising in the later years. The NFL defendants have argued that any claims for damages in 1989 are precluded by the Eighth Circuit's ruling on the labor exemption in the Powell case. 930 F.2d at 1301-03. The issue of whether this court's dismissal of 1989 damage claims in Powell is

binding on the entire Powell class, which is comprised of essentially all NFL players, [FN42] or just the named plaintiffs is currently pending before the Eighth Circuit on defendants' appeal of this court's decertification and dismissal of the Powell case. Powell v. National Football League, 773 F.Supp. 1250 (D.Minn.1991); see Quinn Aff. P 61. No points are attributed to contracts entered into before 1989, because any pre-Plan B claims would appear to be precluded by the Eighth Circuit's ruling in Powell, 930 F.2d at 1301-03.

FN42. In addition to various subclasses, the Powell class seeking relief from veteran player rules consists of: all veteran players who were on the active roster of a [member] club at the beginning of the 1987 NFL football season, and all veteran players who are at any time on the active roster of, or under contract to, an NFL club prior to the date of a final judgment in this action. Powell v. National Football League, 773 F.Supp. 1250, 1252 (D.Minn.1991) (citing prior orders in Powell). Moreover, if the Eighth Circuit were to rule that this court improperly dismissed various class claims, see id., or that the labor exemption still applies, an issue which is arguably pending in Powell, but see Powell v. National Football League, 139 F.R.D. 381, 383 (D.Minn.1991) (rejecting that claim), such rulings could preclude all players' claims, including damage claims, based on veteran player restraints.

6.17 No points are to be given for new contracts that were signed while players were unrestricted under Plan B, because such unrestricted players were able to obtain substantial benefits thereby, and their damages, if any, would be much smaller and more difficult to ascertain than those of restricted players. No points are to be awarded for damage claims based on the college draft, because it is unlikely that players would be able to establish liability for any draft claims arising prior to 1993. The expiration date of the draft provision in the last collective bargaining agreement extended beyond the rest of the agreement, through 1992, and thus, as a result of the Eighth Circuit's decision in Powell, the labor exemption would likely bar damage claims based on the draft until 1993. (Quinn Aff. P 62.) [FN43]

FN43. The Brown court has held that the labor exemption continues until a collective bargaining agreement expires. Brown v. Pro Football, Inc., 782 F.Supp. 125, 130-33 (D.D.C.1991).

6.18 Instead of receiving points for the claims in their respective cases, the named plaintiffs in White and Lewis are to receive payments amounting to the actual damages that they would have sought if they were to rely on the methodology developed by plaintiffs' expert economist in the McNeil case. [FN44] (Quinn Aff. PP 54, 55.) That procedure will result in larger recoveries for the named

plaintiffs than for other class members, but as previously discussed, the court determines that such preferential treatment of the named plaintiffs is fair and reasonable in the context of the present litigation. See supra P 2.18; Enterprise Energy Corp., 137 F.R.D. at 250 (approving class representative "incentive awards" where named plaintiffs took steps to protect interests of class members, thereby effectuating "a Settlement that provides substantial economic and non-economic benefits to the Class Members"); Luevano, 93 F.R.D. at 89. Most of the named plaintiffs stepped forward and actually participated in the litigation as witnesses or in discovery. Several of the named plaintiffs also believed that participating as a plaintiff might pose a risk to their careers, a fear that is underscored by defendants' history of retaliating against players who filed such suits. (Berthelsen Aff. PP 21-24.) [FN45] Moreover, the named plaintiffs helped to obtain enormous benefits inuring to all class members, therefore the court concludes that it is appropriate that they be permitted additional consideration. Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,996; 1977 WL 1497, at *17 (distribution of settlement payments based on a point system was "fair and reasonable" even where "[a]dditional points [we]re awarded to the named plaintiffs").

FN44. Similarly, to the extent that their claims in the preexisting lawsuits are coextensive with any claims that they might have had in the White class action, the named

plaintiffs in the preexisting lawsuits are not to share in the class settlement fund. (Quinn Aff. P 56.) The procedure of separately settling the preexisting individual cases that laid the groundwork for the present class action is similar to that followed in Alexander, in which the preexisting and related Mackey case was settled for separate consideration. Alexander 1977-2 Trade Cas. (CCH) P 61,730, at 72,992, 1977 WL 1497, at *19 (discussing separate settlement funds set up for Mackey and Alexander).

FN45. The Berthelsen affidavit sets forth specific examples of such retaliation. For example, Kermit Alexander was cut by the Philadelphia Eagles after striking in 1974. The Eagles were subsequently forced to reinstate Mr. Alexander pursuant to an NLRB decision. After becoming the named plaintiff in the class action challenging the Rozelle Rule, Mr. Alexander was again cut by the Eagles. (Berthelsen Aff. P 23(a)). John Mackey was traded, and as a result, his career was prematurely terminated, in retaliation for his role in the Mackey case. See id. P 23(b). The NLRB also affirmed an Administrative Law Judge's finding that Sam McCullum was cut by the Seattle Seahawks in retaliation for confronting management on strike issues. See id. P 23(c). Irvin Eatman's situation also demonstrates the pressure that such named plaintiffs face. Mr. Eatman was originally a named plaintiff in McNeil. At that trial, his agent, Thomas Condon, testified that when he was negotiating Mr. Eatman's contract with the Kansas City

Chiefs, he was informed that the Chiefs would not sign, release or trade Mr. Eatman as long as he remained a named plaintiff in McNeil. Mr. Eatman subsequently withdrew as a named plaintiff. See id. P 23(c).

6.19 The named plaintiffs in the present action, as well as the named plaintiffs in the related player challenges to Plan B that are being simultaneously settled, also receive another benefit. Those players will have the right to refuse designation as either Franchise or Transition Players for the remainder of their NFL careers. [FN46] (Quinn Aff. P 71.) As previously discussed, in light of the enormous non-monetary benefits to the class achieved by the settlement, as well as the magnitude of the total settlement fund, the court concludes that the additional payments and benefits to the named plaintiffs are not disproportionate to the risks and efforts they have undertaken. The court further notes that the interests of the five named plaintiffs in the present case are not antagonistic to those of the absent class members because the differences in treatment "relate solely to the remedy and not to the subject matter of the litigation." Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,990, 1977 WL 1497, at *9 (citation omitted); see supra P 2.18.

FN46. That provision will likely benefit no more than twenty-five of the plaintiffs named in the various cases, because the remaining named plaintiffs have either retired

from professional football, or have not been designated as either Franchise or Transitional Players.

6.20 The apportionment of the settlement fund between the Plan B and preseason pay claims was made by class counsel, in consultation with the NFLPA, in an effort to estimate the relative aggregate value of the different types of claims while taking into account the strength of such claims on the merits. (Quinn Aff. P 64.) Based on the methodology employed by Michael Glassman, plaintiffs' expert economist in the McNeil case, plaintiffs in the present action would have sought approximately $530 million in class-wide damages for their Plan B claims. The Plan B settlement fund of $110 million is approximately twenty-one percent of that total. The total class-wide damages sought by plaintiffs for preseason pay claims amounts to approximately $22 million, and the preseason pay settlement fund of $5 million is approximately twenty-three percent of that total. In addition, the entire $5 million fund for preseason claims is to be paid out in the first year of the Agreement. (Quinn Aff. P 64.)

6.21 Both types of claims are subject to substantial uncertainties concerning proof at trial. As previously discussed, the experience of the McNeil plaintiffs demonstrates the difficulty of proving damages arising from defendants' player rules. See supra P 6.2(b) & note 37. Moreover, liability has not yet been established for the preseason pay claims, thus there is the additional risk that

players with such claims will never have the opportunity to prove damages.

In addition to the uncertainties involved in the proof of plaintiffs' affirmative case for the preseason pay claims, defendants have asserted tens of millions of dollars in counterclaims and offsets that could reduce or eliminate any recovery on those claims.

6.22 The formula for distribution of the preseason pay claim fund seeks to equitably apportion the fund among the claimants by comparing each player's share to the amount of his claim without considering the impact of any offsets or counterclaims. The formula is more closely tied to a player's actual "claim" for damages than the Plan B formula because, unlike the inherently uncertain Plan B claims, the amount of a preseason pay claim may be computed by reference to three factors: (i) the player's base salary under Paragraph 5 of his NFL Player Contract; (ii) the number of weeks that the player played before being cut in the preseason period; and (iii) the amount that the player was actually paid. (Quinn Aff. P 65.) As with the Plan B claims, the named plaintiff for the preseason pay claims, Mr. Duerson, is to receive the damages that he would have sought at trial and will not share in the preseason pay settlement fund. (Quinn Aff. P 63.) [FN47]

FN47. Similarly, the named plaintiffs in the preexisting Tice lawsuit, who are also separately settling their individual claims, will not share in the preseason pay

settlement fund but will receive the damages that they would have sought at trial.

6.23 Based on the foregoing, the court concludes that the method of distributing the settlement funds is fair and reasonable.

VII. THE CLAIMS OF THE OBJECTORS DO NOT WARRANT DISAPPROVAL OF THE SETTLEMENT

7.1 As of April 2, 1993, timely objections to the settlement were filed on behalf of fifty-eight active or former NFL players. [FN48] In addition, timely objections were filed on behalf of one NFL member club, the Philadelphia Eagles, one college player, Brian Pressler, and one player agent, Robert J. Sheridan. [FN49]

FN48. See supra note 11 (listing those objectors).

FN49. Mr. Sheridan purportedly filed objections on behalf of Brian Pressler, and all other present and future "college and other football players" similarly situated. He also purportedly filed objections on behalf of himself and all present and future agents and attorney-agents similarly situated.

The court also considered all other, untimely objections that had been filed as of the date of the final fairness hearing, April 16, 1993. [FN50] There were fifteen

such objections filed on behalf of active or former NFL players, [FN51] and fifteen objections filed on behalf of college players. [FN52]

FN50. As previously noted, at the hearing, the court granted all motions to extend time, ruling that all objections filed as of the hearing date, April 16, 1993, would be considered by the court, whether such objections were timely filed or not. However, the court also ruled that April 16, 1993, was the deadline for objections, and that it would not consider any objections filed after that date.

FN51. Those objectors were: Brian Blades, Roland James, Pat Carter, Kenneth F. Ruettgers, Jerry Ball, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever.

FN52. Untimely objections were filed on behalf of college players Jesse Becton, Scott Brown, Rudy Thompson, Ernie Lewis, Eugene Brown, Percy Coleman, James Chinn, Ron Alexander, Brad LaCombe, Dan Purcell, Steve Ross, Ron Moran, Steve Robinson, Garrett Washington and Bennie Hargro.

A. Player and Agent Objections

7.2 As a preliminary matter, the court notes that if the "vast preponderance of the class members" do not object

to the settlement, then claims of inadequacy by some class members are entitled to little weight. See City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir.1974); cf. Van Horn, 840 F.2d at 606 ("class settlement may be approved over significant percentage of objections from class members"). In any given year, approximately 1,500 players are employed in the NFL during the course of the regular season. Hundreds of additional players are employed by the NFL clubs each year during the preseason. Class counsel estimates that the White class consists of more than 5,000 active and former NFL players, as well as numerous players who are likely to be drafted. The number of class members objecting to the proposed settlement is less than two percent of the total class. The court concludes that the vast preponderance of the class supports the terms of the proposed settlement.

7.3 Other than the Philadelphia Eagles, the overwhelming majority of objectors oppose the settlement because: (i) one or more elements of the proposed player reservation system allegedly violate the antitrust laws, or (ii) one or more provisions of the settlement are allegedly unfair as applied to that player or group of players. The court will address each group of objections in turn. [FN53]

FN53. Because many of the player-objectors moved to join with others' objections at the final fairness hearing, the court did not address most of the objections individually. Objections to the adequacy of notice and the certification of

the White class are discussed supra. See Sections I-III.

7.4 A number of objectors contend that the court must withhold its approval because various provisions of the Settlement Agreement violate the antitrust laws.

7.5 In reviewing a proposed class action settlement, the Eighth Circuit has determined that the trial court does not have the privilege or duty of independently resolving the issues of fact and law "which underlie the merits of the dispute." Grunin, 513 F.2d at 123 (quoting City of Detroit, 495 F.2d at 456). " 'The very purpose of compromise is to avoid the delay and expense of such a trial.' " Id. at 124 (quotation omitted).

7.6 When evaluating the propriety of an antitrust class action settlement, the Grunin court further held that: unless the terms of the agreement are per se violations of antitrust law, we must apply a 'reasonableness under the totality of the circumstances' standard to the court's approval. Id. at 124 (quotation omitted).

7.7 Similarly, when affirming approval of a class action settlement involving professional basketball players in Robertson, the Second Circuit applied the standard set forth in Grunin and held that such a settlement agreement is entitled to approval unless the terms of the agreement are per se illegal, are illegal to a "legal certainty" or the settlement authorized future conduct that is clearly illegal. Robertson, 556 F.2d at 686 (citing Grunin, 513 F.2d at 124).

7.8 In McNeil, this court determined that right of first refusal/compensation rules of Plan B should be evaluated under the rule of reason, rather than the per se rule. McNeil, 790 F.Supp. at 896-97. In making that determination, the court observed that all of the cases to date had "applied the rule of reason rather than the per se analysis" to determine whether various NFL player restricts violated the antitrust laws. Id. [FN54] The court concludes that at the present time, absent a full trial on the merits, it is unlikely that the proposed settlement, taken as a whole, would be deemed a per se violation of the antitrust laws because the Agreement would probably be subject to analysis under the rule of reason. [FN55] See Robertson, 556 F.2d at 686 (court may not disapprove of settlement if "challenged practices have not been held to be per se illegal in any previously decided case"); Grunin, 513 F.2d at 124. Moreover, a player reservation system that was more restrictive than the instant settlement was expressly approved in Alexander. Accordingly, the court overrules any objections that the settlement as a whole fails because it is per se illegal. Id.

FN54. See, e.g., Mackey, 543 F.2d at 606, 619 ("the unique nature of the business of professional football renders it inappropriate to mechanically apply per se illegality rules"); Smith v. Pro Football, Inc., 593 F.2d 1173, 1182 (D.C.Cir.1978) ("the legality of player restrictions in professional sports should be governed by the

rule of reason"); Kapp v. NFL, 390 F.Supp. 73, 82 (N.D.Cal.1974) ("in this particular field of sports league activities the purposes of the antitrust laws can be just as well served (if not better served) by the basic antitrust reasonableness test as by the absolute per se test sometimes applied by the courts in other fields"), aff'd in part and dismissed in part on other grounds, 586 F.2d 644 (9th Cir.1978), cert. denied, 441 U.S. 907, 99 S.Ct. 1996, 60 L.Ed.2d 375 (1979).

FN55. In McNeil, plaintiffs argued that there was "sufficient judicial experience" concerning the illegality of various player restraints "to warrant the application of the per se rule" to the challenged Plan B rules. 790 F.Supp. at 896. The court, however, rejected that contention, concluding that it was "bound by the Mackey decision, in which the Eighth Circuit determined that the Rozelle Rule should be judged under the rule of reason", not the per se rule. Id. at 897. Nevertheless, if there is future litigation concerning the legality of any NFL player rules, plaintiffs' argument may be adopted by some court. This court, however, makes no ruling on the issue.

7.9 Various objectors ask the court to disapprove of the entire settlement as a result of one or two provisions. Alternatively, they ask the court to strike or revise those objectionable provisions before approving the settlement.

7.10 If, however, the court concludes that the

Settlement Agreement as a whole is fair, reasonable and adequate to the class, its inquiry is ended and it should approve the entire settlement. This court has previously determined that: in acting to protect the interests of the class when reviewing a settlement, the court cannot rewrite or modify the terms of the agreement.... The settlement must be approved or disapproved as a whole. Welsch, 667 F.Supp. at 1289-90 (citations omitted). Another judge in this district has similarly ruled that: [a]lthough the court must act to protect the interests of the class when reviewing the proposed settlement, the court also recognizes that it is limited in its ability to change that agreement. The proposed settlement must stand or fall as a whole.... The court is not to dictate or rewrite the terms of the proposed agreement. Holden, 665 F.Supp. at 1406 (citations omitted).

Thus, even if it were sympathetic to objections directed at one or more provisions of the Settlement Agreement, the court may not pick and choose which provisions to approve and which to disapprove.

7.11 Moreover, after carefully considering all of the objections that call into question a specific provision or provisions of the Settlement Agreement, the court nonetheless concludes that the Agreement as a whole is fair, reasonable and adequate to the class. Accordingly, the court will not deny final approval on the basis of those objections.

7.12 Taken as a whole, the revised player employment rules set forth in the Settlement Agreement

constitute a new and unique approach to player employment in the NFL. Class counsel and the NFLPA believe that the entire Agreement will benefit the overwhelming majority of the players in the NFL, and raise salaries throughout the league. Defendants believe that the provisions challenged by various objectors, including the college draft, the rules concerning modified free agency, the Franchise and Transition Player provisions, the Final Eight Plan and the salary cap, are essential for the maintenance of competitive balance, quality of play and franchise stability. [FN56]

FN56. Defendants further claim that challenged provisions are consistent with the jury's verdict in McNeil, and Eighth Circuit law, under which defendants contend that they are entitled to impose some type of player reservation system. It is unclear, however, whether those assertions are supported by either the McNeil verdict or Eighth Circuit law, and the court does not rule on defendants' claims.

7.13 Examining the Franchise Player provisions of the Settlement Agreement, the court specifically finds that: (i) a club invoking the Franchise Player provisions must make an extraordinarily high salary tender to any player so designated; [FN57] (ii) such required tenders act merely as a floor and not a ceiling on the designated player's salary; [FN58] and (iii) the Franchise Player provisions are extremely limited in scope. [FN59] The court further notes that any tenders for Franchise Players next year will clearly

reflect the market increase in player compensation this year for other players in the same position. (Quinn Supp.Aff. P 13); see supra P 4.1(d) (setting forth required tender). Moreover, Franchise Players may use contracts entered into by other players in the same position this year as a benchmark for their own negotiations, thereby benefitting from market increases in the current year. [FN60] Thus, despite their designation, Franchise Players will still receive substantial benefit from the increased competition for player services. [FN61]

FN57. Of the twenty-eight member clubs, only ten have designated Franchise Players, likely reflecting the magnitude of the tender required to make such designation. (Quinn Supplemental Aff. P 12.) The court thus rejects the contention that the minimum tender provides no benefit, because it protects class members to the extent that it deters teams from making such designations. Moreover, as discussed above, it does provide individual Franchise Players with a floor under which their teams may not bargain. Although ten players have been designated as Franchise Players, two of those ten are named plaintiffs, and have refused such designation. The court notes that objections have been filed on behalf of the remaining eight players designated as Franchise Players.

FN58. As class counsel noted in his affidavit, one of the objectors: James "Jumbo" Elliott, an offensive tackle

who was designated by the New York Giants as their Franchise Player, received a minimum tender of $1,167,500, which is 91% more than his previous year's salary of $612,000. (Quinn Supp.Aff. P 13.) The affidavit further states that another Franchise Player and objector, Steve Young, is expected: to negotiate a new contract paying him $4 to $5 million per year, even though the required tender at his position (quarterback) is $3,264,000. Id. P 14.

FN59. A team may designate only one Franchise Player per year. Moreover, the required tender offer for Franchise Players is only for a one year contract. In order to restrict the same player for another year, the team must make another tender.

FN60. The court therefore rejects the contention that Franchise Players will always be one year behind other players for purposes of participating in market-wide salary increases.

FN61. The court also rejects the contention that the Franchise Player rules are more restrictive than the Plan B rules because it was theoretically possible to change teams under Plan B if a new team was willing to pay the required compensation to a player's former team. Although such movement was theoretically possible, the evidence in McNeil demonstrated that, in reality, the Plan B

compensation requirement was such an effective deterrent that during the four years in which Plan B was imposed, only three restricted players received offers from other teams, and no restricted player ever switched teams.

Based on the foregoing, the court concludes that objections concerning the Franchise Player provisions provide no basis on which to reject the proposed settlement.

7.14 The challenged Transition Player provisions similarly require substantial tenders that must be made to any player so designated. [FN62] In addition, any player designated as a Transition Player next year will derive substantial benefit from the increased competition for player services because his tender will reflect this year's increase in salaries for players in the same position. See supra P 4.1(e) (discussing required tender). Moreover, Transition Players are subject only to a right of first refusal, there is no corresponding draft pick compensation. [FN63] The evidence before the court indicates that the Transition Player provisions have not prevented some players from receiving offers from other clubs. [FN64] Those provisions are also extremely limited in application. Based on the foregoing, the court concludes that the objections to the Transition Player provisions do not present a basis for disapproving the entire settlement.

FN62. The tenders, like those for Franchise Players, operate as a floor. For example: Pierce Holt, a defensive

lineman formerly with the San Francisco Forty- Niners, has signed a three-year guaranteed contract with the Atlanta Falcons worth $7.5 million. This is far in excess of the minimum tender offer of $1,476,114 for players at his position (defensive end) and represents an increase of more than 240% over his average salary under his previous contract of $733,000. (Quinn Supp.Aff. P 15) (emphasis in original).

FN63. Thus, the Transition Player rules are less restrictive than the Plan B rules, which required such compensation.

FN64. Despite being subject to a right of first refusal, at least four Transition Players have already received offers from other teams. (Quinn Supp.Aff. P 15.; Tagliabue Decl. P 26.)

7.15 Various objectors challenge the restricted free agency provisions of the Settlement Agreement, which allow the clubs to retain certain first refusal and compensation rights to veteran players whose contracts have expired. See supra PP 4.1(b) & (c) (detailing provisions). When viewed in the context of the entire settlement, the court determines that those provisions, like the Franchise and Transition Player provisions, do not warrant disapproval of the Settlement Agreement. In making this determination, the court relies on the following facts: (i) clubs are required to

make substantial salary tenders in order for rights of first refusal or compensation to be maintained; and (ii) the draft choice compensation to a club if it fails to resign a restricted free agent is generally much less than the two first round draft choices required under Plan B. Moreover, the evidence indicates that the right of first refusal and relaxed compensation rules do not completely foreclose competitive bidding because a number of restricted free agents have received offers from other clubs, and several have already changed teams. (Quinn Supp.Aff. P 11; Tagliabue Decl. P 16.) Accordingly, the court finds that the objections to the restricted free agency provisions fail to provide a basis for rejecting the Settlement Agreement.

7.16 The court has also considered objections to the salary cap provisions, and concludes that such objections do not warrant disapproval of the settlement. The court notes that the salary cap must not be viewed in isolation, but rather, in connection with the entire agreement accepted by class counsel, including the liberalized free agency provisions and the minimum revenue guarantees that would accompany the "triggering" of the salary cap provisions.

It is also significant that all aspects of the new free agency system contained in the Settlement Agreement, including the salary cap provisions, will likely be included in a new collective bargaining agreement, under which such provisions would be exempt from antitrust law as a result of the nonstatutory labor exemption.

7.17 Objections have also been filed on behalf of

sixteen college players concerning the college draft and entering player pool. [FN65] The court finds, however, that those objections do not warrant disapproval of the Settlement Agreement. The entering player pool, which permits continued individual salary negotiations, [FN66] is part of the overall free agency system, and sets its limits based on the large amounts that rookies have earned in the last three years. The pool will also be adjusted to reflect increases in NFL revenues. The draft is reduced this year from twelve to eight rounds, and seven rounds thereafter, thus providing more college players with the right to free agency. In addition, none of the college players who filed objections were drafted, and thus have no basis on which to object to the provisions of the Settlement Agreement concerning the college draft. Accordingly, the court rejects the objections asserted on behalf of the college players.

FN65. The court notes that Mr. Sheridan widely distributed a letter in which he sought to "warn" college players of the impending settlement hearing and to solicit their objections to the settlement. His efforts, however, produced only sixteen objectors. The court concludes that the objections set forth on behalf of the college players are not widespread.

FN66. The court notes that when defendants originally imposed Plan B, it contained a provision that would have barred all individual contract negotiations as of

February 1, 1993, and established a wage scale for all players' services. McNeil, 790 F.Supp. at 875-77.

Robert Sheridan, an attorney-agent who filed objections on behalf of the college players, also objected to the draft and entering player pool on behalf of himself and all other agents similarly situated. Mr. Sheridan, however, is not a class member. Moreover, any injury he alleges is too attenuated and speculative to provide him with standing to assert a claim concerning either entering player pool or the draft, and none of the college players he claims to represent were actually drafted. The court therefore overrules the objections filed on behalf of himself, and all other agents similarly situated.

The court also rejects Mr. Sheridan's objections concerning the proposed changes in the NFL Player Contract. Mr. Sheridan argues that the modification eliminates protections provided under the existing version by making it easier for teams to cut players. Testimony at the hearing, however, indicated that under the present version of the NFL Player Contract, defendants may cut players at anytime, for any reason. White, Transcript of Final Fairness Hearing at 231-26 (Apr. 16, 1993) (testimony of Steve Jordan). Thus, the protection on which Mr. Sheridan relies does not exist under the current version of the Contract. The court finds that the proposed changes do not alter any protection previously provided. Accordingly, the court rejects any objections concerning the proposed changes

to the NFL Player Contract.

7.18 Finally, the court rejects various requests to postpone final approval of the Settlement Agreement for purposes of permitting discovery. The court first notes that class members have been provided with, or had available to them, more than adequate information with which to analyze the fairness and reasonableness of the settlement. Moreover, if there is no evidence of collusion in the negotiation process, objectors have no right to seek discovery concerning the negotiations of a class action settlement. See, e.g., In re Domestic Air Transp. Antitrust Litig., 144 F.R.D. 421, 424 (N.D.Ga.1992) (citing Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co., 834 F.2d 677, 684 (7th Cir.1987)). As previously discussed, the court finds that there is no evidence of any such collusion. See supra P 2.19; see also White, Transcript of Preliminary Approval Hearing at 82-84 (Feb. 26, 1993) (finding no evidence of collusion and concluding settlement was product of arm's length negotiations). The court declines to postpone approval pending discovery.

B. The Philadelphia Eagles' Objections

7.19 One NFL member club, the Philadelphia Eagles, also opposes final approval of the Settlement Agreement. The Eagles argue that court approval of the settlement should be denied because: (i) the proposed settlement of related litigation concerning players' licensing rights is unlawful; (ii) the NFLPA's role in settlement negotiations was in violation of the National Labor Relations

Act; and (iii) the Settlement Agreement improperly requires the court to issue an advisory opinion concerning the scope of the nonstatutory labor exemption.

7.20 As a threshold matter, the court determines that the Eagles lack standing to assert such objections. [FN67] A nonsettling defendant has standing to object to a settlement only if it can demonstrate some form of legal prejudice. See, e.g., Alumax Mill Prods., Inc. v. Congress Fin. Corp., 912 F.2d 996, 1001-02 (8th Cir.1990). Having found that the settlement as a whole is not per se illegal, the court concludes that the Eagles cannot demonstrate any legal prejudice.

FN67. Despite that determination, the court nevertheless considered the Eagles' written submissions, including its proposed findings, and allowed the team to set forth its objections at the final fairness hearing.

Moreover, on July 20, 1992, at a duly constituted and authorized meeting of the member clubs of the NFL, the Eagles, along with twenty-five other clubs, voted to delegate complete authority to the Executive Committee of the NFL Management Council (CEC) to propose, evaluate, negotiate and consummate a settlement agreement with class counsel. The CEC engaged in such settlement negotiations and on January 6, 1993, unanimously approved this settlement in principle, and on February 26, 1993, unanimously approved the Stipulation and Settlement

Agreement. Under the Articles of Association and Bylaws of the NFL Management Council, the Eagles are bound to abide by those actions.

In addition, the Eagles' objections violate their obligations as parties to the Stipulation and Settlement Agreement "not [to] take any action to delay or hinder ... Court approval" of the Agreement. The objections also violate the terms of this court's order of February 26, 1993, which granted preliminary approval of the Stipulation and Settlement Agreement. That order provides in relevant part that: 10. The parties are hereby preliminarily and temporarily ordered to abide by the terms of the Stipulation and Settlement Agreement until a final ruling of this Court approving or rejecting the Stipulation and Settlement Agreement. White, No. 4-92-906, slip op. at 5 (D.Minn. Feb. 26, 1993).

7.21 In any event, the court questions the plausibility of the Eagles' purported objections. The court notes that the Eagles have an ongoing disagreement with the league concerning the compensatory draft selections they have been offered for the named plaintiffs they have lost, or whom they may lose in the future. They are also demanding a compensatory draft selection for Keith Jackson, a player released from the right of first refusal/compensation rules of Plan B pursuant to this court's order of September 24, 1992. Jackson v. National Football League, 802 F.Supp. 226 (D.Minn.1992). There is evidence before the court that the Eagles' objections are nothing more than an attempt to

obtain more compensatory draft selections. (Quinn Supp.Aff. P 41.)

Turning to the specific objections, the Eagles contend that the proposed settlement of the litigation concerning players' licensing rights involving the NFLPA and NFL Properties is illegal because it provides the NFLPA with a monopoly for those rights. See supra P 4.13 & note 35 (detailing settlement terms and listing cases to be settled). However, Mr. Braman, owner of the Eagles and Chairman of the Executive Committee of NFL Properties, is reported to have spoken in favor of that settlement. (Tagliabue Decl. P 39.) In addition, sworn statements of class counsel and Commissioner Paul Tagliabue unequivocally state that the NFL has no agreement with class counsel or the NFLPA, as part of the contemplated settlement of the licensing litigation, to terminate its involvement in the player licensing business. See id. P 42. Even if that settlement is consummated, NFL Properties plans to continue in the player licensing business. Id. P 41. Moreover, if the NFLPA does seek the right to be the exclusive licensing agent of all players, that issue will likely be the subject of future collective bargaining between the NFL and the NFLPA. Based on the foregoing, the court determines that Mr. Braman's factual assertions concerning the NFL's alleged agreement with the NFLPA to "exit" the market for player licensing rights may be open to question. [FN68]

FN68. The court rejects any contention that class

counsel has a conflict because of its role in the licensing litigation. After Judge Lamberth raised the issue of a possible conflict in the Lewis case, class counsel withdrew from its representation of the NFLPA in the licensing litigation. The court therefore concludes that any alleged conflict has been cured. (Quinn Supp.Aff. PP 38-39); see also supra note 29 (finding that no such conflict exists).

7.22 The court also finds that the Eagles' challenge to the legality of the terms of the proposed settlement agreement in the licensing litigation is irrelevant to the issue of whether the proposed settlement is fair, reasonable and adequate to the class. The licensing lawsuits are related litigation principally between the NFLPA, NFL Properties, and individual NFL players. [FN69] Under Federal Rule of Civil Procedure 23, the court has no obligation to evaluate settlement agreements in any "related litigation" to which the Stipulation and Settlement Agreement merely refers.

FN69. Those lawsuits are not before this court.

7.23 The court concludes that the NFLPA's role in the settlement negotiations leading to the Stipulation and Settlement Agreement does not provide a basis on which to disapprove of the settlement. Both this court and the General Counsel of the NLRB have concluded that by sponsoring various lawsuits, the NFLPA was not thereby acting as the players' collective bargaining representative.

Powell and McNeil, 764 F.Supp. 1351 (in McNeil, rejecting without discussing defendants' claim that the NFLPA continued to function as a union because it was funding various lawsuits); see Defs.' Mem. Opp'n Pls.' Mot. Partial Summ. J. at 10 (Oct. 26, 1990) (raising that contention); Pittsburgh Steelers, Inc., No. 6-CA-23143, 1991 WL 144468 (June 26, 1991). Where it was appropriate for the NFLPA to finance the prosecution of antitrust litigation challenging terms and conditions of employment, the court finds that the NFLPA's role as consultant to class counsel in settling the same litigation is also lawful and appropriate.

7.24 Nor was the NFLPA's role in this class action an improper inducement to union formation. The court notes that labor unions increasingly use litigation as a method of organizing employees. See, e.g., Shaffer v. Farm Fresh, Inc., 966 F.2d 142 (4th Cir.), cert. denied, --- U.S. ----, 113 S.Ct. 657, 121 L.Ed.2d 583 (1992); cf. Pittsburgh Steelers, Inc., No. 6-CA- 23143, 1991 WL 144468, at *4 n. 8 (June 26, 1991) (as long as NFLPA's disclaimer of its union status was "otherwise unequivocal and adhered to", it was irrelevant that the disclaimer "was motivated by 'litigation strategy,' i.e., to deprive the NFL of a defense to players' antitrust suits"). Moreover, there is no evidence before the court to support such a claim. See infra Section X (detailing the reestablishment of the NFLPA as players' collective bargaining representative).

7.25 The Eagles also contend that any findings by

the court concerning the applicability of the labor exemption to the settlement would constitute an advisory opinion. The court concludes, however, that any findings on the applicability of the nonstatutory labor exemption to the terms of the Stipulation and Settlement Agreement would not be advisory to the extent that such terms are incorporated in any new collective bargaining agreement. A central issue in the present case, as in McNeil and Powell, is the applicability of the nonstatutory labor exemption to the NFL's player rules. As part of the compromise of those issues, class counsel has agreed that the new rules would be protected by the labor exemption for the express term of any new collective bargaining agreement in which such rules are incorporated. Accordingly, it would not be advisory for this court to find, pursuant to any joint petition by the parties to the Settlement Agreement, that the labor exemption applies to the new player employment rules to the extent they are incorporated in a new collective bargaining agreement, and for the express term thereof. Cf. Jensen v. United States, 743 F.Supp. 1091, 1103 (D.N.J.1990) (where settlement agreement provided for a judicial determination of the constitutionality of certain agency procedures, the court's decision was not advisory).

7.26 For the same reasons, the labor exemption findings contemplated by the Settlement Agreement would not constitute an improper waiver of any class member's rights. See Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,991, 1977 WL 1497, at *9 ("[a]ny settlement or

consent order would have had to deal with future rules in order to afford appropriate relief to plaintiffs and to be acceptable to the defendants"). [FN70]

FN70. The court notes that although courts disagree on its scope, no court has determined that the nonstatutory labor exemption ends before the expiration of the parties' collective bargaining agreement. See supra note 17 (discussing conflict between various labor exemption rulings).

7.27 Based on the foregoing, the court rejects all of the Eagles' objections to the Settlement Agreement.

7.28 Defendants suggest that the court sanction the Philadelphia Eagles because of its objections. Although troubled by the Eagles' apparent disregard of the court's order of February 26, 1993, and the implausibility of the objections raised, the court nonetheless declines to sanction the Eagles at the present time.

7.29 Based on the foregoing, the court makes the following findings of fact and conclusions of law: (a) The terms of the Stipulation and Settlement Agreement fundamentally modify the NFL's rules, policies and practices regarding veteran player movement and employment. The settlement also fundamentally modifies by agreement the college draft, the NFL Player Contract, and various other terms and conditions of NFL player employment. (b) The revised player mobility and

employment rules represent a successful effort by NFL players to eliminate Plan B, and to bring about substantial modifications in the principles relating to veteran player transfers. (c) Under Eighth Circuit law, when evaluating the present Settlement Agreement, it is unnecessary for the court to determine whether every provision of the settlement, if adopted outside a settlement context and made subject to a trial on the merits, would be deemed reasonable after a full rule of reason inquiry. In fact, the court should not make such inquiry. (d) The Settlement Agreement, as a whole, is not per se illegal. (e) The court overrules all objections for the reasons previously set forth, and concludes that the overall agreement is fair, reasonable and adequate to the class.

VIII. MOTIONS TO INTERVENE

8.1 Based on the court's determination that the overall agreement is fair, reasonable and adequate to the class, the court denies all motions to intervene except to the extent that the movants, other than Mr. Sheridan and the Tice plaintiffs, [FN71] shall be permitted to intervene as "intervenor-objectors" solely for purposes of preserving their rights to appeal any judgment entered by the court in connection with the Stipulation and Settlement Agreement. [FN72] See Croyden Assocs. v. Alleco, Inc., 969 F.2d 675, 678-80 (8th Cir.1992) (unnamed class member must move to intervene in order to preserve right to appeal), cert. denied, --- U.S. ----, 113 S.Ct. 1251, 122 L.Ed.2d 650 (1993).

FN71. The Tice plaintiffs are: Gary Hogeboom, William H. Mandley, James J. Skow, Curt E. Singer, Ronald A. Mattes, Shawn Miller, Bob Nelson, Jeff L. Walker, Tim Smiley, Steven W. Baack, Troy Johnson, Thomas D. Sanders and Clifford Charlton.

FN72. Formal motions to intervene were filed on behalf of: Wilber Marshall, Paul Gruber, Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James Jenkins, Johnny Thomas, Eric Williams, Don Warren, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever. At the hearing, the following objectors moved to intervene: Byron Evans, Brian Pressler, Jesse Becton, Scott Brown, Rudy Thompson, Ernie Lewis, Eugene Brown, Percy Coleman, James Chinn, Ron Alexander, Brad LaCombe, Dan Purcell, Steve Ross, Ron Moran, Steve Robinson, Garrett Washington, Bennie Hargro, Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Don Beebe, Gregory Scales, Sammy Martin, Brian Blades, Mike Farr, Pepper Johnson, Pat Carter, Maurice Hurst and John Fourcade. At the hearing, the court granted various motions to intervene solely for purposes of preserving those parties' right to appeal any judgment entered concerning the Stipulation and Settlement

Agreement. However, the court did not grant those motions for purposes of filing complaints in intervention, or for any other purpose. On April 23, 1993, the following players filed motions to intervene: Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson and Jerry Ball.

However, none of the movants shall be considered named "plaintiffs" under the terms of the Stipulation and Settlement Agreement, none of the complaints in intervention shall be filed, and the named parties need not answer or otherwise respond to any of the complaints in intervention. See supra note 72.

The motions to intervene made on behalf of Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson and Jerry Ball expressly reserve those players' "jurisdictional and other defenses." As a result of their various filings with the court, their appearance to object to the settlement and their motions to intervene, the court finds that those players have submitted to the court's jurisdiction because they have not confined their arguments to the claim that they are beyond the court's jurisdiction, but rather have objected to the merits of the proposed settlement. See, e.g., Trans World Airlines, Inc.

v. Mattox, 897 F.2d 773, 787 (5th Cir.1990) (finding intervenors waived any objection to personal jurisdiction when their arguments went "to the heart of the issue before the district court"). As discussed below, the court also finds that it has jurisdiction over those players and their individual lawsuits, which are currently pending in the Central District of California, under the All-Writs Act. See infra P 9.3 (finding that the court has such jurisdiction). Accordingly, the court denies their motions to intervene to the extent that those players seek to reserve their jurisdictional defenses.

The Tice plaintiffs originally filed a motion to intervene, but based on the withdrawal of their objections, the court dismisses their motion to intervene as moot.

Mr. Sheridan's motion to intervene, to the extent that it applies to himself, or other agents, is denied for lack of standing. See supra P 7.17 (finding that Sheridan lacked standing to object on behalf of himself or other agents similarly situated).

IX. DEFENDANTS' MOTIONS TO ENJOIN OTHER ACTIONS

9.1 Defendants also move to enjoin various other actions [FN73] in which players assert claims for equitable and monetary relief concerning the same player practices at issue in the present case. [FN74] In support of the motions, defendants rely on this court's: (i) certification of a mandatory Rule 23(b)(1) non-opt-class on January 6, 1993, as amended on February 17, 1993; and (ii) final approval of the Stipulation and Settlement Agreement.

FN73. Those cases are: (a) Hurst v. NFL, No. 92-3263 (E.D.La.); (b) Dusbabek v. NFL, No. 4-93-126 (D.Minn.); (c) Lee v. NFL, No. 4-93-125 (D.Minn.); (d) McMillian v. NFL, No. 4-93-99 (D.Minn.); (e) Wright v. NFL, No. 4-93-124 (D.Minn.); (f) Jones v. NFL, No. 92-2512 (C.D.Cal.); (g) Sanders v. NFL, No. 92-4365 (C.D.Cal.); (h) Matthews v. NFL, No. 92- 4370 (C.D.Cal.); (i) Hunter v. NFL, No. 92-4373 (C.D.Cal.); (j) O'Neal v. NFL, No. 92-4368 (C.D.Cal.); (k) Allen v. NFL, No. 92-7536 (C.D.Cal.); (l) Norton v. NFL, No. 93-0029 (C.D.Cal.); (m) Hurst & Fourcade v. NFL, No. 93-0766 (E.D.La.); (n) Harper v. NFL, No. 4-93-314 (D.Minn.); (o) Risien v. NFL, No. 4-93-182 (D.Minn.); (p) Duncan v. NFL, No. 93-1481 (C.D.Cal.); and (q) Evans v. NFL, Civ. No. 92-878 (D.Ariz.).

FN74. The court rejects various parties' attempts to distinguish their claims from those asserted in the present action, finding that the claims all arise from the same practices at issue in the present action, and are encompassed by the court's certification of the White class.

Opponents to those motions argue that they have a constitutional right to opt out of the White class, that the court has no jurisdiction to grant such motions and that any injunction concerning various lawsuits filed in the Central District of California would be premature. The court will address each contention in turn.

9.2 As previously discussed, the court determines that due process does not require that absent class members be provided with a right to opt out of the White class action. See supra Section III. Accordingly, the court rejects those arguments as a basis for denying defendants' motions to enjoin other actions.

9.3 The court further concludes that it has jurisdiction, pursuant to the All-Writs Act, 28 U.S.C. s 1651, [FN75] to enjoin the various lawsuits subject to defendants' motions. See, e.g., Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183-84, 72 S.Ct. 219, 221, 96 L.Ed. 200 (1952) (federal courts have "an ample degree of discretion" in determining how best to administer "multiple litigation in the federal judicial system", and such discretion includes the power to stay pending federal court actions); [FN76] In re Joint Eastern & Southern District Asbestos Litig. (Eagle- Picher), 134 F.R.D. 32, 37 (E.D.N.Y. & S.D.N.Y.1990) (under the All-Writs Act, courts have jurisdiction "to certify a national class action and to stay pending federal and state cases brought on behalf of class members"); Robertson v. National Basketball Ass'n, 413 F.Supp. 88, 90 (S.D.N.Y.1976) (enjoining separate federal lawsuit filed by an individual class member in order to protect "the jurisdiction of this court to determine this action, either by trial or by court-approved settlement"). Under the Act, the court may also enjoin actions that were filed, or allegedly filed, [FN77] before the present action. See Kerotest, 342

U.S. at 183, 72 S.Ct. at 221 (federal courts are not bound by rigid doctrines, such as the "first to file" rule because "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, does not counsel rigid mechanical solution of such problems"). The court concludes that it has jurisdiction to enjoin those lawsuits pursuant to the All-Writs Act.

FN75. That Act provides in relevant part that: The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. 28 U.S.C. s 1651(a).

FN76. The court rejects any contention that the Supreme Court's holding in Kerotest was limited by considerations of forum non conveniens, as that issue was relevant only to the determination of which court proceeding should be stayed, not to the power of a federal court to stay actions pending in other federal courts. 342 U.S. at 185-86, 72 S.Ct. at 222. Moreover, in light of the long history of related litigation before this court, the court concludes that considerations of forum non conveniens favor the enjoining of the other pending actions, rather than the present action.

FN77. The court rejects the contention that the Hurst class action was filed before the present action. The White class action complaint was filed in this court on September

21, 1992, nine days before the Hurst case was filed in the Eastern District of Louisiana. See Hurst v. National Football League, Civ. No. 92-3263 (E.D.La. filed Oct. 1, 1992). Moreover, subsequent amendments to the White complaint did not initiate new lawsuits. See Fed.R.Civ.P. 15(c). The court finally notes that the Powell class action, which was filed in 1987, is properly considered the "first" class action filed for purposes of the proposed settlement.

Moreover, the court has proper jurisdiction over the White class action. Under such circumstances, the court does not need a separate basis of personal jurisdiction in order to enjoin individual lawsuits of mandatory class members. Cf. In re State of South Dakota, 692 F.2d 1158, 1162 n. 8 (8th Cir.1982) ("jurisdictional considerations under the All-Writs Act have been expanded beyond the technical notions of personal and subject matter jurisdiction"). As the Second Circuit held: the need to enjoin conflicting ... proceedings arises because the jurisdiction of a multidistrict court is 'analogous to that of a court in an in rem action or in a school desegregation case, where it is intolerable to have conflicting orders from different courts.' In effect, ... the district court had before it a class action proceeding so far advanced that it was the virtual equivalent of a res over which the district court required full control. In re Baldwin-United Corp., 770 F.2d 328, 337 (2d Cir.1985) (quotation omitted); accord Battle v. Liberty Nat'l Life Ins. Co., 877 F.2d 877, 882 (11th

Cir.1989) (it "makes sense to consider this case, involving years of litigation and mountains of paperwork, as similar to a res to be administered").

In fact, there is ample authority for the proposition that the court has jurisdiction to enjoin other actions even if the parties were not members of the White class. See, e.g., United States v. New York Tel. Co., 434 U.S. 159, 174, 98 S.Ct. 364, 373, 54 L.Ed.2d 376 (1977) ("the power conferred by the [All-Writs] Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order"); In re Baldwin- United Corp., 770 F.2d 328, 338 (2d Cir.1985) ("[a]n important feature of the All-Writs Act is its grant of authority to enjoin and bind nonparties to an action when needed to preserve the court's ability to reach and enforce its decision in a case over which it has proper jurisdiction") (citations omitted)). Accordingly, the court rejects any claim that the motions to enjoin must be denied because it lacks personal jurisdiction over any party.

The court concludes that in the present case, it is both necessary and proper to exercise its authority under the All-Writs Act. Based on that authority, the court enjoins the various other pending actions, relying on the following factors: (1) the long history of related litigation in this court; (2) to properly effectuate the terms of the proposed settlement, which the court finds to be fair, reasonable and adequate to class members, and to which class members

received adequate notice and opportunity to object; (3) to conserve judicial resources; (4) to properly protect the court's jurisdiction over the White class action, and to enforce and effectuate its judgment; (5) to eliminate the risk of inconsistent or varying adjudications which may subject defendants to incompatible standards of conduct; (6) to prevent the prosecution of other actions that would frustrate the court's efforts to craft a class action settlement in the present case; (7) to eliminate the risk of inconsistent or varying judgment that may affect the rights of class members and impair their ability to protect their interests; and (8) in light of the court's determination that the White class was properly certified, to utilize the class action mechanism, which is ideally suited for resolving the claims at issue, to settle this massive litigation.

9.4 The court also rejects the contention that defendants' motions to enjoin various suits filed in the Central District of California are premature. Although those actions are stayed at the present time, it is undisputed that those plaintiffs, in their most recent status report to the California district court, stated that they intend to move to lift the stays. The court therefore concludes that defendants' motions are not premature.

Based on the foregoing, the court grants defendants' motions to enjoin various other lawsuits. [FN78]

FN78. See supra note 73 (listing relevant cases).

X. THE LAWFUL FORMATION OF THE NFLPA AS THE EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE OF NFL PLAYERS

10.1 On January 6, 1993, the parties reached an agreement in principle to settle this class action, as well as various other related litigation.

10.2 After an agreement in principle was reached on January 6, 1993, and after a vote of the Board of the NFLPA to seek to become the collective bargaining representative for the players, the NFLPA began to collect authorization cards from NFL players designating it as the exclusive collective bargaining representative of all present and future NFL players.

10.3 By letter dated March 23, 1993, Richard A. Berthelsen, General Counsel of the NFLPA, informed Paul Tagliabue, Commissioner of the NFL that "[a] majority of the players on 1992 season-ending rosters have now signed cards authorizing the NFLPA to represent them for the purposes of collective bargaining."

10.4 In accordance with an agreement between the NFLPA and the NFL, dated March 24, 1993, the American Arbitration Association conducted a check-off of signed cards of interest against the 1992 season-ending rosters. By letter of March 26, 1993, the American Arbitration Association reported that 873 cards had been duly executed and returned by eligible voters, thus establishing the majority standing of the NFLPA.

10.5 By letter dated March 29, 1993, from Harold

Henderson, Executive Vice President for Labor Relations and Chairman of the NFL Management Council, to Eugene Upshaw, Executive Director of the NFLPA, and based upon the evidence verified by the American Arbitration Association that a majority of NFL players have recognized the NFLPA as their exclusive bargaining representative, the NFL voluntarily recognized the NFLPA as the sole and exclusive collective bargaining representative of present and future employee players in the NFL, as set forth in the previous NLRB Certification # 18-RC-8308, dated January 22, 1971.

10.6 Based on the representations and sworn testimony of the parties, it appears that at all times during this process, the NFLPA maintained that it would not accept any help from the NFL, or any of its member clubs. Nor did the NFL, or any of its member clubs, take any action which in any way hindered or supported the formation of the NFLPA as the exclusive collective bargaining representative of all present and future NFL players.

10.7 Based on the foregoing, the court has reached the following conclusions:

(a) The NFLPA has been lawfully formed and selected by the players to serve as the exclusive collective bargaining representative of all present and future NFL players.

(b) Neither the NFL nor any of its members have taken any action which in any way hindered or supported the formation of the NFLPA as the exclusive collective

bargaining representative of all present and future NFL players.

(c) The NFL and its member clubs have lawfully recognized the NFLPA as the players' exclusive collective bargaining representative.

(d) Accordingly, the NFLPA is fully authorized and empowered to enter into a new collective bargaining agreement with the NFL and its member clubs.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. The court denies all motions to intervene on behalf of: Wilber Marshall, Paul Gruber, Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James Jenkins, Johnny Thomas, Eric Williams, Don Warren, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders, Paul Siever, Byron Evans, Brian Pressler, Jesse Becton, Scott Brown, Rudy Thompson, Ernie Lewis, Eugene Brown, Percy Coleman, James Chinn, Ron Alexander, Brad LaCombe, Dan Purcell, Steve Ross, Ron Moran, Steve Robinson, Garrett Washington, Bennie Hargro, Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Don Beebe, Gregory Scales, Sammy Martin, Brian Blades, Mike Farr, Pepper Johnson, Pat Carter, Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan,

Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson, Jerry Ball, Maurice Hurst and John Fourcade, except to the extent that the foregoing movants shall be permitted to intervene as "intervenor-objectors" solely for purposes of preserving their rights to appeal any judgment entered by the court in connection with the Stipulation and Settlement Agreement. None of the foregoing movants shall be considered named "plaintiffs" under the terms of the Stipulation and Settlement Agreement;

2. Mr. Sheridan's motion to intervene, to the extent that it applies to him individually, or to other agents similarly situated, is denied in all respects;

3. The motion to intervene on behalf of the following players is denied as moot: Gary Hogeboom, William H. Mandley, James J. Skow, Curt E. Singer, Ronald A. Mattes, Shawn Miller, Bob Nelson, Jeff L. Walker, Tim Smiley, Steven W. Baack, Troy Johnson, Thomas D. Sanders and Clifford Charlton;

4. The complaints in intervention shall not be filed, and the named plaintiffs and defendants need not answer or otherwise respond to any such complaints in intervention;

5 The motions to intervene made on behalf of Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson and Jerry Ball are expressly denied to the extent that those players seek to reserve their

jurisdictional defenses;

6. The motions to extend time are granted to the extent that the court previously granted such motions on the record, that is, all motions to extend time filed on or before April 16, 1993, are granted; all motions to extend time made at the hearing on April 16, 1993, are granted; and no objections filed after April 16, 1993, will be considered by the court;

7. Defendants' motions to enjoin the following actions are granted: (a) Hurst v. NFL, No. 92-3263 (E.D.La.); (b) Dusbabek v. NFL, No. 4-93-126 (D.Minn.); (c) Lee v. NFL, No. 4-93-125 (D.Minn.); (d) McMillian v. NFL, No. 4-93-99 (D.Minn.); (e) Wright v. NFL, No. 4-93-124 (D.Minn.); (f) Jones v. NFL, No. 92-2512 (C.D.Cal.); (g) Sanders v. NFL, No. 92-4365 (C.D.Cal.); (h) Matthews v. NFL, No. 92-4370 (C.D.Cal.); (i) Hunter v. NFL, No. 92-4373 (C.D.Cal.); (j) O'Neal v. NFL, No. 92-4368 (C.D.Cal.); (k) Allen v. NFL, No. 92-7536 (C.D.Cal.); (l) Norton v. NFL, No. 93-0029 (C.D.Cal.); (m) Hurst & Fourcade v. NFL, No. 93-0766 (E.D.La.); (n) Harper v. NFL, No. 4-93-314 (D.Minn.); (o) Risien v. NFL, No. 4-93-182 (D.Minn.); (p) Duncan v. NFL, No. 93-1481 (C.D.Cal.); and (q) Evans v. NFL, Civ. No. 92-878 (D.Ariz.).

All members of the plaintiff class in the present action are permanently enjoined from further pursuit or prosecution of the above listed actions, or any other actions now pending that purport to challenge the same player

practices at issue here, or challenge the Stipulation and Settlement Agreement in this action. In addition, all members of the plaintiff class are permanently enjoined from initiating any such actions in the future. The court shall also retain jurisdiction over this action to effectuate and enforce the terms of the injunctions and Stipulation and Settlement Agreement;

8. Defendants' request to sanction the Philadelphia Eagles is denied; and

9. The Philadelphia Eagles' motion for leave to file a response to the named parties' proposed findings of fact and conclusions of law is granted.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 9105 Sunset Boulevard, West Hollywood, California 90069; that on April 18, 1995, I served the within *Appendix For Petition For Writ of Certiorari (Volume IV of IV)* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: Original and 40 Copies)

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 1995, Los Angeles, California.

Betty J. Malloy
(Original Signed)